

9-403. Eligibility determination for indigent defense services.

[Section 31-15-7 NMSA 1978. For use in the District Court, Magistrate Court and Metropolitan Court]

STATE OF NEW MEXICO

COUNTY OF _____
_____ COURT

KEY _____

[STATE OF NEW MEXICO]

[COUNTY OF _____]

v.

No. _____

_____, Defendant

ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES

Name: _____ DOB: _____ Age: _____

AKA: _____ Sex: Male Female SSN: _____

Address: _____ Phone: _____

Charges: _____

Lives alone: _____ Lives with: Spouse _____ Children _____ Parent _____ Friend _____ Other _____

Marital status: Single _____ Married _____ Divorced _____ Separated _____ Widowed _____

Number of dependents in household: _____

[] Defendant is in jail. [] Defendant is not in jail.

PRESUMPTIVE ELIGIBILITY:

____ I currently DO NOT receive public assistance.

____ I currently receive the following type of public assistance in _____ County:

DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS) \$ _____

TANF/GA \$ _____ Food Stamps \$ _____ Medicaid \$ _____

Public Housing \$ _____ SSI/SSDI \$ _____

VA Disability _____

____ Unable to complete application because of possible Mental Health/Developmental Issue of applicant.

NET INCOME:

SELF

SPOUSE

Employer's Name

Employer's Phone

Pay Period
(weekly, every second week, twice monthly, monthly)

Net take home pay
(salary wages minus deductions required by law)

\$ _____ \$ _____
Other income sources
(please specify)

\$ _____ \$ _____

TOTAL ANNUAL INCOME \$ _____ + **SCREENING USE ONLY**
_____ = ____/____/____ **A**

ASSETS:

CASH ON HAND \$ _____ \$ _____

BANK ACCOUNTS \$ _____ \$ _____

REAL ESTATE (equity) \$ _____ \$ _____

\$ _____ \$ _____

MOTOR VEHICLES (equity) \$ _____ \$ _____

\$ _____ \$ _____

OTHER PERSONAL PROPERTY (equity):
(describe and set forth equity)

\$ _____ \$ _____

\$ _____ \$ _____

TOTAL ASSETS \$ _____ + **SCREENING USE ONLY**
_____ = ____/____/____ **B**

EXCEPTIONAL EXPENSES (total exceptional expenses of dependents):

MEDICAL EXPENSES (not covered by insurance) \$ _____

MEDICAL INSURANCE PAYMENTS (receipts required) \$ _____

COURT-ORDER SUPPORT PAYMENTS/ALIMONY \$ _____

CHILD-CARE PAYMENTS (e.g. day care) \$ _____

OTHER (describe) _____ \$ _____

_____ \$ _____

TOTAL EXCEPTIONAL EXPENSES **SCREENING USE ONLY**
\$ _____ = ____/____/____ **C**

I UNDERSTAND THAT IF IT IS DETERMINED THAT I AM NOT INDIGENT, I MAY
APPEAL TO THE COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED

_____ I wish to appeal.
I do not wish to appeal.

This statement is made under oath. I hereby state that the above information regarding my financial condition is correct to the best of my knowledge. I hereby authorize the screening agent, district defender and the court to obtain information from financial institutions, employers, relatives, the federal internal revenue service and other state agencies.

STATE OF NEW MEXICO)
COUNTY OF) ss

Notary

My commission expires:

_____ The applicant is indigent.
 _____ The applicant is not indigent.
 _____ The applicant [has] [has not] paid the \$10.00 application fee.
 Receipt number: _____

Signature of Screening Agent	Title
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(Complete the following only if the court has determined that the applicant is unable to pay the \$10.00 application fee).

_____ I find that the applicant is unable to pay the \$10.00 indigency application fee, due to the following reason _____ and I therefore waive the payment of the \$10.00 application fee.

Signature of Screening Agent

GUIDELINES FOR DETERMINING ELIGIBILITY

Pursuant to Section 31-15-7 NMSA 1978, the following guidelines are established for determination of indigency and eligibility for public defender services.

I. APPLICATION FEE

A person shall pay a non-refundable application fee for each case in the amount set in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender for representation. The interviewer will determine if the financial circumstances of the applicant are such that the fee would pose an exceptional hardship, and will recommend to the District office Administrator or Eligibility Supervisor if the fee should be waived. The interviewer will document on the application the reason for the fee waiver.

II. PRESUMPTION OF INDIGENCY

An applicant is presumed indigent if the applicant is a current recipient of state or federally administered public assistance programs for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), Veteran's disability benefits (VA) if the benefit is the sole source of income, food stamps, medicaid, public assisted housing or Department of Health, Case Management Services (DHMS). Proof of assistance must be attached to the application and no further inquiry is necessary. The document submitted as proof must clearly identify the applicant as currently receiving the qualifying benefit. Benefit cards without other supporting documents will not be accepted as proof of benefit. If the applicant is not receiving Medicaid benefits, but has dependants in the household for whom Medicaid eligibility has been determined, the applicant will be presumed indigent. Home equity, etc. is not to be taken into account if the applicant is a current recipient of one of the six programs described above.

If the interviewer is unable to complete the indigency application or believes the information to be unreliable because of communication or other problems associated with a mental or developmental disability of the applicant, indigency will be presumed. When this is the case the Mental Health/Communication section of the application should be checked. Where available, the designated attorney for mental health issues is to be immediately notified, and if that person is not available the duty attorney is to be immediately notified.

III. FINANCIAL RESOURCES

If the applicant is not presumptively indigent, the screening agent shall examine the financial resources of the applicant with consideration given to:

Net Income, Paragraph A;
Assets, Paragraph B; and
Exceptional Expenses, Paragraph C.

A. **Net Income.** The screening agent shall include total salary and wages for the applicant and the applicant's spouse minus deductions required by law (FICA, state and federal withholding). Child support deductions and medical insurance deductions will also be considered if already deducted from salary, but will not be recounted in the Exceptional Expenses section if counted here. Savings deductions and non-mandatory retirement deductions will be added to the net income. In order to calculate the salary of an individual, the screening agent shall use one of the two methods:

(1) if the individual is presently unemployed, the screening agent shall ask about employment during the twelve (12) months preceding the interview date and calculate the amount of money earned during such twelve (12) months. Proof of this income must be attached to the application; or

(2) if the individual is presently employed, the screening agent shall project the current income for twelve (12) months into the future. Proof of this income must be attached to the application. If the applicant is unemployed and has no income, the screening agent shall inquire as to how the applicant "gets by". Proof of income is not required but responses must be documented on the eligibility form (i.e. eats on soup line, street person, sleeps in car, etc.) and some proof of how the individual lives must be provided if available, i.e., lives with someone providing support, lives on the street (must provide some proof of assistance from homeless shelters or other street assistance providers). If the applicant gets by on "odd jobs", the income from the odd jobs must be verified. Zeros will not be accepted for income. If there is no income, an explanation is needed as to why there is no income and documentation is needed that sets forth the reason for no income.

(3) Any person that has been incarcerated for six (6) months or more is also presumed to be indigent. Proof must be provided, i.e., proof of incarceration, jail release form. An individual incarcerated in a Department of Corrections facility in any state automatically qualifies.

Net income shall include, but is not limited to social security payments, union funds, veteran's benefits, worker's compensation, unemployment benefits, regular support from any absent family member, public or private employee pensions, or income from dividends, interests, rents, estates, trusts or gifts. If the applicant lives alone but receives rent from a family member, the rent shall be considered as regular support from the applicant's family and shall be included as income.

The income of a spouse must be included in the calculation of income even though the applicant and the applicant's spouse are not living in the same household unless:

(a) the applicant and the spouse are legally separated (must provide proof of legal separation);

(b) the applicant and the spouse have not resided together within the last 12 months and the applicant can provide a notarized statement from an adult family member verifying that fact; or

(c) the spouse is an alleged victim of the applicant or complaining witness against the applicant.

B. **Assets.** The screening agent shall consider all assets of the applicant and the applicant's spouse that are readily convertible into cash within a reasonable period of time. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit and tax refunds. Real estate other than the primary residence shall be valued at the current full valuation on the county property tax rolls less any outstanding obligations against the property. Written documentation of both the value and the outstanding obligations will be attached to the application.

C. **Exceptional Expenses.** The screening agent shall consider any unusual expenses of the applicant and the applicant's legal dependents that would, in all probability, prohibit the applicant from being able to secure private counsel. The following expenses are not exceptional expenses: rent, food, utilities, gas money, consumer loans and student loans. Exceptional expenses shall include, but not be limited to, costs for medical care or medical insurance, family support obligations and child care payments.

In order to be included as an exceptional expense:

- (1) the cost of medical care cannot be covered by insurance;
- (2) family support expense obligations must be verified by court order or a notarized statement from the person to whom the support is paid. The support must actually be paid on a regular basis; and must be verified by written documentation such as receipts or cancelled checks;
- (3) child care must be paid on a regular basis. If the applicant says that child support is paid when the applicant can, the payments do not qualify as exceptional expenses.

The applicant must provide proof of the exceptional expense incurred and proof that payment is being made on a regular basis. If proof is provided, the regular monthly payment for the exceptional expense is multiplied by twelve (12) months and the calculated amount can be deducted from total income.

Other exceptional expenses shall include: payroll garnishments, internal revenue service claims, court ordered attorney fees or other court ordered payments and funeral expenses not covered by insurance.

An approved filing from a pending bankruptcy proceeding of a potential client can be considered in determining indigency.

IV. INDIGENCY FORMULA

An applicant is indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

The screening agent shall calculate the amount of available funds by adding the total for net income for the household (Column A) together with the total for assets for the household (Column B) and subtracting the total for exceptional expenses (Column C). If the available funds exceed one hundred fifty percent (150%) of the applicable federal poverty level guideline, the applicant is not indigent.

If the applicant does not know the applicant's spouse's income or assets the applicant is presumed not indigent and is not eligible for free representation unless the applicant produces the necessary information within two (2) working days after the interview.

V. APPEAL

If the applicant is found by the screening agent or the court not to be indigent, the applicant may appeal the decision to the district defender in those districts with public defender offices. If the applicant wishes to appeal the decision of the district defender, the applicant shall appeal to the district court. In those districts without public defender offices, the applicant may appeal directly to the court. If the applicant wishes to appeal a finding that the applicant is not indigent:

(1) in those districts with district public defender offices, the screening agent shall notify the public defender of the appeal;

(2) in those districts without public defender offices, the screening agent shall notify the court of the appeal.

All appeals shall be filed within ten (10) working days after the date of the decision.

VI. REIMBURSEMENT

Any applicant who is ineligible for free representation but is unable to hire private counsel may sign a contract for public defender representation on a reimbursement basis. The reimbursement cost shall cover all charges for legal fees, expert witness, and private investigation costs. Reimbursement fees shall be governed by the schedule adopted by the Public Defender Department.

First payment under a reimbursement contract shall be due thirty (30) days from the date of execution of the contract. If the applicant is incarcerated on the date of execution of the contract, the date of payment shall be thirty (30) days from the date of the applicant's release from incarceration.

If a court enters an order appointing the Public Defender Department to represent a defendant and ordering the defendant to reimburse the state for representation, the defendant shall execute a contract for reimbursement in the appropriate amount under the department's schedule. If the defendant fails to execute a reimbursement contract, the order of appointment shall be forwarded to Public Defender administration for collection along with the documentation stating the amount owing for representation. If the defendant refuses to provide information necessary to determine net income or eligibility, the reimbursement fee shall be the maximum contract rate allowable for the crimes charged under the schedule set by the department.

VII. NEW CHARGES

If an applicant has applied for public defender services within six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is not necessary, but the applicant shall be required to pay the application fee. A printout of the CDMS entry for the original application with the new referral should be placed in the new file being opened. If an applicant has applied for public defender services and been found eligible more than six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is necessary. An applicant must pay the application fee for each case for which the applicant seeks representation regardless of whether completion of a new eligibility documentation form is required, unless the fee has been waived.

[Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1, 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No. 09-8300-039, effective October 26, 2009.]